

U.S. Patent Application Serial No. 10/564,083  
Response filed June 1, 2010  
Reply to OA dated March 30, 2010

### **REMARKS**

Claims 18-34 remain pending in this application, of which claims 18, 26 and 34 are independent claims. Claims 18, 26, 32 and 34 are hereby amended. The applicants respectfully submit that no new matter have been introduced by these amendments.

Claims 18-34 stand rejected under 35 USC 101 as being directed to non-statutory subject matter.

Particularly, the Examiner relied on an *en banc* decision called “Bilski v. Warsaw (2008)” to support the position that the claims of this application are not directed to a patent eligible subject matter (Action, p. 3, lls. 3-8). It is noted with respect that, while the applicants have heard of a Federal Circuit *en banc* decision called In re Bilski, the applicants are unaware of any *en banc* decision from 2008 called “Bilski v. Warsaw (2008).”

In the Federal Circuit opinion called In re Bilski, the Federal Circuit determined that, when a claim recites a “*process*” within the meaning of 35 USC 101, a machine-or-transformation test can be applied to determine whether: (1) the process is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.

As the Examiner pointed out in the Office Action, claim 18 recites a “device comprising...a storing unit configured to store a plurality of reference patterns.” Accordingly, claim 18 recites a “machine” or a “manufacture”—not a “process” within the meaning of 35 USC 101, and the machine-or-transformation test should not be applied to claim 18. Further, claim 18 recites a storing unit

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configured to store a plurality of reference patterns. This is a physical component of a machine or a manufacture.

Likewise, claims 19-25 each recite “a device,” and the machine-or-transformation test does not apply to these claims. While claims 26-33 are directed to method claims, these claims recite “storing a plurality of reference patterns.” Thus, these claims recite a step that uses a physical component of a machine or a manufacture. Accordingly, the machine-or-transformation test of *In re Bilski* is satisfied.

Accordingly, the applicants once again respectfully request the Examiner to withdraw this rejection.

Claims 18, 19, 21-27 and 29-34 stand rejected under 35 USC 103(a) as obvious over Toshiba (EP 038992) in view of Geva (US 2004/0073098).

The applicants hereby amend claim 18 to recite “a calculating unit configured to calculate a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern in the reference patterns arranged two-dimensionally.” Claims 26 and 34 have been similarly amended.

Geva fails to disclose or suggest the recited “calculating unit configured to calculate a value indicative of a distance between a position of a first reference pattern and a position of the second reference pattern in the reference patterns arranged two-dimensionally,” as now recited in claim 18.

Geva discloses a method involving “comparing the signal [having a resemblance to a heart beat] to a reference ‘Template No.1,’ which is initialized with a universal reference shape” (Geva, paragraph [0100]), “‘Template No. 1’ [being] assigned the characteristics of PSUHB in order to utilize it as the unique reference of the person being monitored” (Geva, paragraph [0101]). This method of Geva does not involve calculating a value indicative of a distance between the templates which are arranged two-dimensionally as claimed. Rather, in Geva, a template is compared with a signal of the person being monitored. Thus, Geva does not disclose the recited calculating unit.

As the Examiner conceded, Toshiba fails to disclose or suggest a calculating unit that calculates a distance between a position of the first reference pattern and a position of the second reference pattern (Action, p. 7, lls. 3-6).

Accordingly, neither Toshiba nor Geva discloses or suggests the calculating unit now recited in claim 18. Thus, claims 18, 19 and 21-25 would not have been obvious in view of Toshiba and Geva. Since claims 26-34 similarly recite the step of calculating a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern in the reference patterns arranged two-dimensionally, this rejection should be withdrawn.

Claims 18-34 stand rejected under 35 USC 103(a) as obvious over Toshiba and Geva, as applied to claims 18, 19, 22-27 and 30-34, and further in view of Loki et al (Japan Association of Medical Information, 2002, 14 November, 211-213).

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In particular, the Examiner relied on Geva to disclose the recited calculating unit now recited in claim 18. As explained above, Geva fails to disclose or suggest a calculating unit configured to calculate a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern in the references patterns arranged two-dimensionally as now recited in claim 18. Claims 26 and 34 were similarly amended. Since Loki fails to cure the deficiencies of Geva and Toshiba, this obviousness rejection should be also withdrawn.


There are no additional objections or rejections outstanding in this application. Accordingly, in view of the aforementioned amendments and accompanying remarks, claims 18-34, as amended, are in condition for allowance. Thus, the applicants respectfully request an early action passing this application to issue as a patent.

In the event that the Examiner determines that the prosecution of this application may be expedited by a telephone conference, the Examiner is invited to telephone the undersigned at the number provided below.

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In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,  
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